

## Department of the Army, DoD

## §518.6

552(b)), as implemented by this part. Guidance on the applicability of the FOIA is also found in the Federal Acquisition Regulation (FAR).

(d) Release of some records may also be affected by the programs that created them. They are discussed in the following regulations:

(1) AR 20-1 (Inspector General activities and procedures);

(2) AR 27-10 (military justice);

(3) AR 27-20 (claims);

(4) AR 27-40 (litigation: release of information and appearance of witnesses);

(5) AR 27-60 (intellectual property);

(6) AR 36-2 (Government Accounting Office audits);

(7) AR 40-66, AR 40-68, and AR 40-400 (medical records);

(8) AR 70-31 (technical reports);

(9) AR 20-1, AR 385-40 and DA Pam 385-40 (aircraft accident investigations);

(10) AR 195-2 (criminal investigation activities);

(11) AR 190-45 (Military Police records and reports);

(12) AR 360-1 (Army public affairs: public information, general policies on release of information to the public);

(13) AR 380-5 and DoD 5200.1-R (national security classified information);

(14) AR 380-5 paragraph 7-101e (policies and procedures for allowing persons outside the Executive Branch to do unofficial historical research in classified Army records);

(15) AR 380-10 (Technology Transfer for disclosure of information and contacts with foreign representatives);

(16) AR 381-45 (U.S. Army Intelligence and Security Command investigation files);

(17) AR 385-40 (safety reports and records);

(18) AR 600-8-104 (military personnel information management records);

(19) AR 600-85 (alcohol and drug abuse records);

(20) AR 608-19 (family advocacy records); and

(21) AR 690 (series civilian personnel records, FAR, DoD Federal Acquisition Regulation Supplement (DFARS) and the Army Federal Acquisition Regulation Supplement (AFARS) procurement matters).

### §518.6 Public information.

(a) *Public information.* The public has a right to information concerning the activities of its Government. Army policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A record requested by a member of the public who follows rules established by proper authority in DA shall not be withheld in whole or in part unless the record is exempt from mandatory partial or total disclosure under the FOIA. As a matter of policy, Army activities shall make discretionary disclosures of exempt records or information only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information. Activities must be prepared to present a sound legal basis in support of their determinations. In order that the public may have timely information concerning Army activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information that would not be withheld under the FOIA should continue to be honored through appropriate means without requiring the requester to invoke the FOIA.

(b) *FOIA handbook.* The Department of the Army Freedom of Information Act/Privacy Act (DA FOIA/PA) Office shall prepare, in addition to FOIA regulations, a handbook for the use of the public in obtaining information from its organizations. This handbook will be a short, simple explanation of what the FOIA is designed to do, and how a member of the public can use it to access government records. The DA FOIA/PA Office handbook will explain

the types of records that can be obtained through FOIA requests, why some records cannot, by law, be made available, and how the Army activity determines whether or not the record can be released. The handbook will also explain how to make a FOIA request, how long the requester can expect to wait for a reply, and appeal rights. The handbook will supplement other information locator systems, such as the Government Information Locator Service (GILS), and explain how a requester can obtain more information about those systems. The handbook will be available on paper and through electronic means and contain the following additional information, complete with electronic links to the below elements: the location of reading room and the types and categories of information available; the location of the World Wide Web page; a reference to the Army FOIA regulation and how to obtain a copy; a reference to the Army FOIA annual report and how to obtain a copy; and the location of the GILS page. The DA FOIA handbook, "A Citizen's Guide to Request Army Records Under the Freedom of Information Act (FOIA)," can be accessed on-line at <http://www.rmda.belvoir.army.mil/>. "The Major Automated Information Systems Descriptions" can be accessed at <http://www.defenselink.mil/pubs/foi>.

(c) *Control system.* A request for records that invokes the FOIA shall enter a formal control system designed to ensure accountability and compliance with the FOIA. Any request for Army records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this part, unless otherwise required.

#### §518.7 FOIA terms defined.

(a) *FOIA request.* A written request for Army records that reasonably describes the record(s) sought, made by any person, including a member of the public (U.S. or foreign citizen/entity), an organization, or a business, but not including a Federal Agency or a fugitive from the law, that either explicitly or implicitly invokes the FOIA, DoDD 5400.7, DoD 5400.7-R, this part, or Army Activity supplementing regulations or instructions. All requesters should also indicate a willingness to

pay fees associated with the processing of their request. Requesters may ask for a waiver of fees, but should also express a willingness to pay fees in the event of a waiver denial. Written requests may be received by postal service or other commercial delivery means, by facsimile, or electronically (such as e-mail). Requests received by facsimile or electronically must have a postal mailing address included since it may not be practical to provide a substantive response electronically. The request is considered properly received, or perfected, when the conditions in this paragraph have been met and the request arrives at the FOIA office of the Activity in possession of the records.

(b) *Agency record.* The products of data compilation, such as all books, papers, maps, photographs, and machine readable materials, inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in DA possession and control at the time the FOIA request is made.

(1) The following are not included within the definition of the word "record": Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence; Anything that is not a tangible or documentary record, such as an individual's memory or oral communication; Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use. Personal papers fall into three categories: Those created before entering Government service; private materials brought into, created, or received in the office that were not created or received in the course of transacting Government business; and work-related personal papers that are not used in the transaction of Government business in accordance with Public Law 86-36, National Security Information Exemption.